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MARKEL AMERICAN
INSURANCE COMPANY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEJ

MARKEL AMERICAN INSURANCE
COMPANY, INC.,

Plaintiff,

vs.

QUARK SPEED PARTNERS, a partnership,
DAVE MARSHBURN, an individual,
GILBERT MITCHELL, an individual, and
WAYNE MARTIN, an individual,

Defendants.

Case No.

IN ADMIRALTY

COMPLAINT FOR DECLARATORY
RELIEF

Plaintiff MARKEL AMERICAN INSURANCE COMPANY, INC. ("MARKEL")
complains against Defendants QUARK SPEED PARTNERS ("QUARK"), DAVE
MARSHBURN, GILBERT MITCHELL, and WAYNE MARTIN, and alleges, on
information and belief, as follows:

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JURISDICTION

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2 1. This is an action for declaratory relief as to a policy of marine insurance. It is
3 an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of
4 Civil Procedure and falls within the admiralty and maritime jurisdiction of this Court,
5 pursuant to 28 U.S.C. § 1333. In addition, this action seeks declaratory relief under 28 U.S.C.
6 § 2201.

7 2. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
8 § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claim
9 occurred in this District.

FIRST CLAIM FOR RELIEF: DECLARATORY RELIEF (28 U.S.C. § 2201)

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11 3. Plaintiff MARKEL is a corporation organized and existing under the laws of
12 the State of Virginia with its principal place of business in Glen Allen, Virginia.

13 4. Plaintiff MARKEL is licensed to do business in the State of California, and in
14 this judicial district, as an insurer of marine risks. Plaintiff MARKEL issues marine policies
15 in California, and in this district, through R.C. FISCHER & COMPANY ("FISCHER").

16 5. Defendant QUARK claims, and at all times relevant herein has claimed, to have
17 an insurable interest in that certain 1993 36' Catalina vessel bearing Hull Identification No.
18 CTYR1258L293, named "QUARK SPEED."

19 6. The QUARK SPEED is registered with the United States Coast Guard under
20 Official Number 1025326.

21 7. Defendant QUARK is a partnership organized and existing under the laws of
22 the State of California, with its principal place of business in the County of Contra Costa,
23 State of California. At all times relevant herein, the members of the partnership were
24 Defendants GILBERT MITCHELL, DAVE MARSHBURN, and WAYNE MARTIN.

25 8. Defendant GILBERT MITCHELL is a citizen of the state of California.

26 9. Defendant DAVE MARSHBURN is a citizen of the state of California. He
27 resided in and was domiciled in the County of Contra Costa, State of California at all times
28 relevant herein.

1 10. Defendant WAYNE MARTIN is a citizen of the state of California.

2 11. Some time on or before September 29, 2005, Defendant DAVE
3 MARSHBURN, acting on behalf of Defendant QUARK, purchased insurance from Plaintiff
4 MARKEL through FISCHER for the QUARK SPEED. That policy, number YH5004627-63,
5 was for the period from September 29, 2005 to September 29, 2006 ("2005-2006 Policy").
6 The 2005-2006 Policy contained a notice, number YH7400-0305, entitled "NOTICE:
7 SURVEY REQUIRED BEFORE NEXT RENEWAL." The notice required Defendants to
8 submit a condition and valuation survey of the vessel ninety (90) days before the policy
9 period ended. Defendants failed to submit the required survey.

10 12. Because the boat had not been surveyed, on or about July 7, 2006, Plaintiff
11 MARKEL offered Defendant QUARK a renewal policy, number YH50044627-64, for the
12 period from September 29, 2006 to September 29, 2007 ("2006-2007 Policy"). The 2006-
13 2007 Policy contained a port risk endorsement, number YH7307-0904, entitled
14 "LIMITATION – PORT RISK ONLY." The port risk endorsement required Defendants to
15 keep the QUARK SPEED in its home port of Oakland, California to maintain coverage. It
16 prohibited Defendants from moving the vessel or operating it outside of the port. QUARK
17 accepted the 2006-2007 Policy.

18 13. On June 24, 2007, Defendant GILBERT MITCHELL moved the QUARK
19 SPEED out of its port to Raccoon Straits. While the QUARK SPEED was underway, it was
20 involved in a collision with another vessel. The QUARK SPEED was damaged. Defendant
21 GILBERT MITCHELL and one of the two passengers onboard were thrown overboard and
22 suffered minor injuries.

23 14. Vessel Assist towed the QUARK SPEED to Nelson's Marine in Alameda,
24 California.

25 15. On or about June 25, 2007, Defendants DAVE MARSHBURN and GILBERT
26 MITCHELL contacted FISCHER to submit an insurance claim to Plaintiff MARKEL for the
27 loss to the QUARK SPEED, including salvage costs. This act commenced the claims
28 process.

1 16. During the investigation that Plaintiff MARKEL undertook as part of the claims
2 process, it ascertained that Defendant GILBERT MITCHELL had taken the QUARK SPEED
3 out of port in violation of the port risk endorsement.

4 17. An actual controversy exists between Plaintiff MARKEL and Defendants in
5 that MARKEL contends that for the reasons set forth in paragraphs 1 through 16, inclusive,
6 the 2006-2007 Policy does not provide coverage for the aforementioned losses to and/or
7 caused by the QUARK SPEED, whereas Defendants claim that it does. MARKEL therefore
8 desires and requests a judicial determination as to the rights of each party under the 2006-
9 2007 Policy with respect to whether Defendants complied with the port risk endorsement to
10 the 2006-2007 Policy.

11 WHEREFORE, Plaintiff MARKEL AMERICAN INSURANCE COMPANY, INC.
12 prays as follows:

13 1. That the Court enter a declaratory judgment in its favor with costs, adjudging
14 that Plaintiff is not legally obligated to pay anyone any sum on account of any loss to or
15 caused by that certain 1999 36' Catalina vessel bearing Hull Identification No.
16 CTYR1258L293, named the "QUARK SPEED," stemming from the events of June 24, 2007.

17 2. That the Court grants such other and further relief as the Court deems just and
18 proper.

19
20 DATED: September 26, 2007

SANDS LERNER

21
22 By: 

23 NEIL S. LERNER
24 ARTHUR A. SEVERANCE
25 Attorneys for Plaintiff,
26 MARKEL AMERICAN INSURANCE
27 COMPANY, INC.
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